

New Industrial Relations System to be in place by July 2009

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By 1 July 2009, the Federal Industrial Relations System will be operated and overseen by one body known as "Fair Work Australia" (FWA). FWA will replace The Australian Industrial Relations Commission, The Australian Industrial Registry, The Australian Fair Pay Commission, The Australian Fair Pay Commission Secretariat, Workplace Authority, Workplace Ombudsman and The Australian Building and Construction Commission.

The key highlights of the new system which will be in place by 1 July 2009 include new bargaining rules in negotiating enterprise agreements and reforms to unfair dismissal laws.

What will be the new bargaining rules?

The FWA will have greater powers in relation to the bargaining process between employees, their unions and employers. The FWA will ensure that the parties:

- attend and participate in meetings at reasonable times;
- disclose relevant information in a timely manner, subject to appropriate protection for commercial in confidence information;
- respond to proposals made by other parties in a timely fashion;
- give general consideration to proposals and provide reasons for responses;
- refrain from capricious or unfair conduct that undermines freedom of association of collective bargaining. Even though the FWA has greater powers than the previous Australian Industrial Relations Commission, it cannot force parties to make concessions or sign up to an agreement that they do not agree with. The FWA can however enforce orders to ensure the integrity and fairness of the process if evidence is put forward that bargaining has not been in good faith. This can include employees refusing to respond to employer proposals to improve efficiency and productivity.

As the current Australian Industrial Relations Commission, the powers of the FWA to arbitrate disputes will be limited and only available in certain situations. For example, where industrial action is posing a threat to safety and health or to the economy.

The Unfair Dismissal Changes

Effective from 1 July 2009, the current rule that businesses with fewer than 100 employees are exempt will no longer apply. The new qualifying period will be 12 months for businesses with fewer than 15 employees and 6 months for all other businesses. In determining whether or not a business has 15 or more employees, full time, part time and long term casual employees will be included in the count.

Small businesses will be required to comply with a 'Small Business Fair Dismissal Code' (Code). The Code sets out a fair process in order to ensure that the dismissal of an employee is fair in all the circumstances. The Code will be complied with if:

1. a warning based on a valid reason about the employee's conduct or capacity has been given; and
2. a reasonable opportunity has been provided to the employee to rectify the problem or improve their performance.

The Code does not stipulate a systematic process of providing a certain number of warnings. The new FWA will also have an emphasis on resolving alleged unfair dismissals through a mediation process, with legal representation only being permitted in exceptional circumstances. As per current law, the remedies for unfair dismissal include re-instatement, or where re-instatement is not practicable, the employee can be awarded up to 6 months compensation.

Other Changes to the New Industrial Relations System

The FWA will have the power to vary awards and make minimum wage orders. Wages will also be set through a simple and fair safety net process consisting of a National Employment Standard (NES). The safety net will guarantee minimum entitlements for all employees from 1 January 2010.

Like the current legislation, there will be protected and unprotected industrial action. Where it is proposed that protected industrial action will be taken, it can only be protected where it has been approved by a secret ballot of a majority of employees. Industrial action is not protected if it is taken before the nominal expiry date of an enterprise agreement or where the parties have not bargained in good faith. Where this occurs, employers will be required to withhold 4 hours pay for unprotected industrial action of up to 4 hours duration. Where unprotected action exceeds 4 hours, employers will be required to withhold payment for the duration of the action.

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